

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1747 of 1983

with

First Appeals Nos.1733 to 1735 of 1983 with Cross Objection

No.299 of 1998;

First Appeal No.1737 of 1983 with Cross Objection
No.300 of 1998;

First Appeal No.1742 of 1983 with Cross Objection
No.301 of 1998;

First Appeal No.1748 of 1983 with Cross Objection
No.302 of 1998;

First Appeal No.1749 of 1983

First Appeal No.1750 of 1983 with Cross Objection
No.303 of 1998;

First Appeal No.1751 of 1983

First Appeal No.1752 of 1983 with Cross Objection No.304
of 1998

First Appeal No.1753 of 1983 with Cross Objection
No.305 of 1998

First Appeal No.1755 of 1983 with Cross Objection
No.306 of 1998

First Appeal No.1759 of 1983 with Cross Objection
No.308 of 1998

First Appeal No.1762 of 1983

First Appeal No.1763 of 1983 with Cross Objection
No.309 of 1998

First Appeal No.1764 of 1983 with Cross Objection
No.310 of 1998

First Appeal No.1766 of 1983 with Cross Objection
No.311 of 1998

First Appeal No.1767 of 1983 with Cross Objection
No.312 of 1998

First Appeal No.1768 of 1983

First Appeal No.1773 of 1983 with Cross Objection
No.313 of 1998

First Appeal No.1780 of 1983 with Cross Objection
No.314 of 1998

First Appeal No.1781 of 1983 with Cross Objection
No.315 of 1998

First Appeal No.1782 of 1983 with Cross Objection
No.316 of 1998

First Appeal No.1784 of 1983 with Cross Objection
No.317 of 1998

First Appeal No.1786 of 1983 with Cross Objection
No.318 of 1998

First Appeal No.1791 of 1983 with Cross Objection
No.319 of 1998

First Appeal No.1792 of 1983 with Cross Objection
No.320 of 1998

First Appeal No.1795 of 1983 with Cross Objection
No.321 of 1998

First Appeal No.1798 of 1983 with Cross Objection
No.322 of 1998

First Appeal No.1807 of 1983

First Appeal No.1808 of 1983

First Appeal No.1812 of 1983 with Cross Objection No.326
of 1998

First Appeal No.1813 of 1983 with Cross Objection
No.328 of 1998

First Appeal No.1814 of 1983 with Cross Objection
No.330 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

LAND ACQ. OFFICER

Versus

MANILAL C UPADHAYAYA

Appearance:

Mr.M.R. Rawal AGP for the State in First Appeals No.1733 of 83 to 1735/83, 1737/83, 1742/83, 1747/83 to 1751/83 with Cross Objections Nos. 299/98 to 303/98

Mr.H.L. Jani, AGP, for the State, in First Appeals Nos. 1792/83, 1753/83, 1755/83, 1949/83, 1762/83, 1754/83, 1766/83, 1767/83, 1768/83 with Cross Objections Nos.304/98 to 306/98, 308/98 to 312/98

Mr.P.G. Desai, GP, for the State in First Appeals Nos. 1733/83, 1780/83, 1781/83, 1782/83, 1784/83, 1786/83, 1791/83, 1792/83, 1795/83, 1798/83, 1807/83, 1808/83, 1812/83 1813/83, 1814/83, 1823/83 with Cross Objections Nos. 313/98 to 322/98 and 326/98 to 328/98 and 330/98 Mr.H.B. Shah, with MR MUKESH R SHAH for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 19/02/99

COMMON ORAL JUDGEMENT (Kadri, J.)

1. The Land Acquisition Officer, Vatrak Project, Modasa, has filed the abovenumbered First Appeals under Section 54 of the Land Acquisition Act, 1894 ('Act' for short), read with Section 96 of the Code of Civil Procedure, 1908, challenging the common judgment and award dated July 31, 1982, rendered in the group of Land Acquisition Cases Nos. 346/80 to 367/89, and 369/80 to 448/80. The respondents have filed Cross Objections in some of the First Appeals filed by the appellant, details of which have been mentioned in the title of this judgment. As common questions of facts and law arise in these First Appeals and Cross Objections, they are disposed of by this common judgment.

2. A proposal to acquire house-site lands, built-up houses and other structures of village Nanavada, Taluka Malpur, District Sabarkantha, for Vatrak Irrigation Scheme, was received from the Executive Engineer, Modasa. The said proposal was scrutinized by the Government and as the State Government was satisfied that no use-site lands etc of village Nanavada were likely to be needed for the said public purpose, notification under Section 4(1) of the Act was issued and published in the government gazette on January 26, 1978. The lands owners, whose lands and houses and other structures were to be acquired, filed their objections before the Land Acquisition Officer pursuant to service of notices on them under Section 4 of the Act. The Land Acquisition Officer after considering objections submitted his report to the Government under Section 5(A)(2) of the Act. After considering the report of the Land Acquisition Officer, declaration under Section 6 of the Act was made which was published in the government gazette on July 5, 1979. Notices under Section 9(3) (4) of the Act were issued to the persons interested whose houses and lands were to be acquired for the public purpose, namely, Vatrak Irrigation Scheme. A joint measurement was

carried out by the Government Surveyor of the office of the Land Acquisition Officer as well as surveyor of the acquiring body. The Land Acquisition Officer, after considering the relevant materials placed before him and after hearing the persons interested, fixed the market rate of the house-site-open land at the rate of Rs.1.50 per sq.mtr. by his award dated March 25,1980. The Land Acquisition Officer awarded compensation of built-up houses which came to be acquired according to the assessment made by the Executive Engineer who had fixed prevalent market value of the built-up houses. The Land Acquisition Officer also awarded solatium at the rate of 15%, and interest at the rate of 4.1/2%.

3. The respondents were of the opinion that the compensation awarded to them for the house-site lands, built-up houses, was very low. Therefore, they filed applications under Section 18 of the Act before the Land Acquisition Officer requiring him to refer the applications to the District Court for determination of compensation of the acquired lands and built-up houses. Those applications were referred to the District Court, Sabarkantha, at Himatnagar, which came to be numbered as mentioned in the first paragraph of this judgment. According to the respondents-claimants, the Land Acquisition Officer had not considered the prevailing market value of the houses, house-site lands, and compensation awarded to them was undervalued and inadequate. According to the respondents, village Nanavada was adjoining to the taluka headquarters of Malpur and was a fast developing village. It was claimed that depreciation of the houses which was deducted was grossly disproportionate, and the Land Acquisition Officer had not taken into consideration the prevalent market value of the similar properties of nearby villages. It was claimed that the price of materials used in the houses, such as iron rod, bricks, stones and wood was day by day increasing and labour charges had also gone very high and the Land Acquisition Officer had not taken into account these aspects while fixing market value of the 'built-up houses'. The respondents also claimed compensation for gober gas plants which were constructed nearby their houses and claimed compensation of Rs.8000/ for each gas gober plant. The claimants claimed compensation for open house site land at the rate of Rs.30.00 per sq.mtr.

4. The appellants filed common written statement at Exh.8 in each reference application, inter alia, contending that the reference applications were barred by principles of estoppel and the law of limitation. It was

averred that the compensation awarded by the Land Acquisition Officer was according to the prevalent market value, and all the relevant aspects were taken into consideration while assessing value of buildings and open lands. It was stressed that the additional compensation claimed by the respondents was highly exaggerated as well as excessive and all the applications be dismissed.

5. On rival contentions raised in the application and the written statement, the Reference Court raised necessary issues in each reference application.

6. The claimants, in order to substantiate their claim for higher compensation, examined the following witnesses:- (i) Vinodkumar Shivram at Exh.16; (ii) Bhogilal Nathalal, at Exh.19; (iii) Manilal Chhaganbhai, at Exh.22; (iv) Manilal Jivabhai at Exh.26; (v) Kohyabhai Chhaganbhai, at Exh.27; (vi) Bhimaji Sardarji, at Exh.28; (vii) Bhimajibhai Premjibhai, at Exh.32, who was Engineer and building contractor, and who had visited the acquired lands and houses as well as prepared the estimates. The claimants had also produced documentary evidence in the nature of sale deeds and other documents, reference to which will be made at the appropriate stage in the later part of this judgment. On behalf of the appellant, Junior Engineer, Rameshbhai Joitaram Patel, was examined at Exh.40. This witness produced statement with regard to valuation of the acquired houses at Exh.41, 42, and 43. Another witness examined on behalf of the appellant was Deputy Engineer, Kantilal Manilal Shah, at Exh.45. The Reference Court after taking into consideration the situation and facilities available to the residents of village Nanavada and sale deeds Exh.18 and 20, determined market value of the house-site open lands at Rs.3/- per sq.mtr. The Reference Court deduced that the expert, who is engineer and building contractor examined by the claimants, namely, Bhimjibhai Patel, Exh.32, had deposed to help the claimants, because he was engaged by the village people to assess their built-up houses and, therefore, he had given exaggerated estimate of the acquired houses. According to the Reference Court, the expert witness had given estimate of the acquired houses about three to four times more than the rates claimed by the claimants. In the opinion of the Reference Court, the evidence of this expert witness was not reliable because he had given rates of acquired houses which were equivalent to rates of newly constructed houses. The Reference Court, therefore, deduced that the expert witness has not given prevalent market value of the houses which were about 30 to 40 years old. At the same

time, the Reference Court was of the opinion that estimate and valuation file produced by the appellant's witness, Kantilal Manilal, Junior Engineer, Exh.45, did not show correct estimate of the acquired houses and, therefore, was not reliable. In the opinion of the Reference Court, the evidence of the expert examined on behalf of the claimants and witness examined by the appellant, did not throw any light as to what was the cost of construction per sq.mtr of the acquired houses. The Reference Court placed reliance on the earlier award of the same Court, by which, a group of Reference Cases came to be decided, wherein, the market value of the houses of the adjoining village was determined. While determining the market value of the acquired houses in Land Reference Cases Nos. 1/80 to 206/80, the Reference Court, in those case, had divided the acquired houses into four categories, namely, (i) houses made of stones and earth; (ii) houses made of bricks and earth; (iii) houses made of bricks and cement and (iv) houses made of R.C.C. slabs. In the present case, the Reference Court also applied the same method and divided the acquired houses in four categories and awarded compensation as under:

- (i) For houses made of R.C.C. slabs, the compensation was determined at Rs.130 per sq.mtr.
- (ii) For houses made of bricks and cement, the compensation was determined at Rs.120/- per sq.mtr.
- (iii) For houses made of bricks and earth, the compensation was determined at Rs.100/- per sq.mtr.
- (iv) For houses made of stones and earth, the compensation was determined at Rs.80/- per sq.mtr.

The Reference Court awarded compensation for gobber gas tanks as well as wells at the rate of Rs.4000/-. The Reference Court did not award any compensation for the lands which were beneath the constructed area. The Reference Court awarded solatium and interest at the rate of 15% and 4.1/2% respectively to the respondents. This common award has given rise to filing of the present appeals by the appellant. The respondents being dissatisfied with the compensation awarded by the Reference Court for acquired houses and open house-site lands, have prayed for enhanced compensation by filing Cross Objections.

7. The learned counsel for the appellant has vehemently submitted that the Reference Court had erred in not relying upon the evidence of witnesses examined by the appellant-acquiring body. It is further submitted by the learned counsel for the appellant that the Reference Court had awarded additional amount of compensation for the acquired houses by merely drawing conjectures and as

the award is based on a guess work, the determination of compensation which is not supported by any cogent and reliable evidence should be set aside. It is submitted by the learned counsel for the appellant that the Land Acquisition Officer had awarded compensation for the acquired houses relying upon the estimate prepared by the expert valuers, i.e. government engineers and therefore the Reference Court ought not to have enhanced the compensation in favour of the respondents and the appeals deserve to be allowed whereas cross objections be dismissed.

8. The learned counsel for the respondents has strenuously argued that the Reference Court was not justified in not placing reliance on the evidence of the expert, Bhimjibhai Premjibhai, Exh.32, who was engineer and building contractor, and who was conversant with the existing structures and built-up houses of village Nanavada while determining compensation. It is claimed that the valuation reports prepared by the expert witness, Bhimjibhai Premjibhai, Exh.32, were reliable and the Reference Court ought to have awarded compensation as per the estimates prepared by the said expert. The learned counsel for the respondents also urged that the Reference Court has erred in not awarding solatium at the rate of 30% in view of the amended Section 23(2) of the Act and interest at the enhanced rate as per amended Section 28 of the Act. Lastly, it was submitted by the learned counsel for the respondents that the market value of the house-site lands determined by the Reference Court is at a lower rate and compensation determined for the acquired houses is very meagre and, therefore, compensation on both the heads should be enhanced and the cross objections should be allowed.

9. The learned counsel for the appellant and the respondents have placed reliance on the oral as well as documentary evidence adduced in the Reference Court. We have also gone through the record and proceedings and paper book containing oral as well as documentary evidence.

10. In our view, the market price determined in respect of the open house-site lands by the Reference Court is just and reasonable. The sale deeds produced at Exh.18 and Exh.20, which were duly proved by witness Vinodkumar Shivram, Exh.16, and witness Bhogilal Nathalal, Exh.19, clearly show that the prevalent market rate of the house-site lands at the relevant time, i.e. at the time of publication of notification under Section 4(1) of the Act, was more than Rs.3.00 per sq.mtr.

Therefore, we do not find any merit in the submission of the learned counsel for the appellant that determination of market value of the house-site lands at Rs.3/- per sq.mtr is excessive. Therefore, we confirm the determination of market value of the house-site lands at Rs.3.00 per sq.mtr by the Reference Court.

11. Where market value of a building constructed is to be assessed, one method which can be adopted is taking into consideration the expenditure likely to be incurred for constructing similar house reduced by depreciation. The property in question should ordinarily be valued as a whole composite unit. In the present case, the respondents have lost their own home and hearths. Because of the acquisition, the respondents had to shift to another village. The respondents must have built their new houses on the lands which were allotted to them in another village. The houses of the respondents were dearer as they were residing in those houses since many years. Valuation of immovable property is not an exact science. It is not a mere algebraic problem. It abounds in uncertainties and no exact reason for the conclusion arrived at is possible on all occasions. Some room has to be allowed for conjecture though the Court should be reluctant to venture too far in this direction. In absence of definite material the Court is sometimes left to its own resources. Though the Reference Court did not get assistance from the oral as well as documentary evidence led by the appellant and the respondents, the Reference Court was justified in relying upon earlier award of the same Court for determination of market value, wherein, the built-up houses of adjoining village came to be acquired as a result submergence because of the construction of Vatrak Irrigation Scheme. It is well settled that previous award of the Reference Court in respect of similar lands and houses of adjoining village and which has become final can be considered as a relevant piece of evidence for the purpose of ascertaining the market value of the lands and houses acquired subsequently in another village.

12. Before the Reference Court, the witnesses examined by the claimants had given description of their houses and materials used in construction of those houses. On the basis of evidence led before the Reference Court, the Reference Court had divided the acquired houses into four categories, which, in our opinion, was quite proper and determination of compensation for the acquired houses on the basis of categorisation cannot be said to be illegal. The compensation awarded to the claimants whose built-up

houses fell in those categories, is quite just, proper and reasonable and, in our opinion, does not call for any interference.

13. Submission of the learned counsel for the appellant that the award of the Reference Court is based on mere conjectures and guess work also deserves to be rejected. The Reference Court, while dividing the acquired houses in four categories, had mainly relied upon the oral evidence of claimant's witnesses. The houses were constructed prior to 30 years. Therefore, the Reference Court was justified in not deducting any amount for depreciation of those houses. The houses were constructed prior to 30 to 40 years and, therefore, it was not possible for the respondents to produce evidence with regard to cost of construction of acquired houses. The Land Acquisition Officer, while awarding compensation for the acquired houses, has deducted depreciation without there being any basis. Therefore, the claimants were justified in raising their grievance by filing reference applications before the District Court. There was sufficient material before the Reference Court to arrive at the conclusion that some of the houses were made of cement and there were concrete slabs in some of the houses. In our view, it cannot be said that the award of the Reference Court is based on no evidence. Therefore, the submission of the learned counsel for the appellant that the award was passed on no evidence and was based on mere conjectures and guess work deserves to be rejected. The appeals therefore have no substance and are liable to be dismissed.

14. The learned counsel for the respondents, Mr. H.B. Shah, has submitted that the Reference Court has erred in not awarding solatium on the amount of compensation at the rate of 30%. The learned counsel for the respondents also submitted that the Reference Court ought to have awarded interest on the amount of compensation at the rate of 9% per annum for the first year and thereafter at the rate of 15% per annum. In support of his submission, the learned counsel for the respondents placed reliance on the decision of the Supreme Court in the case of Union of India, vs. Raghbir Singh (dead) by Lrs. etc. reported in A.I.R. 1989 Supreme Court 1933. Submission of the learned counsel for the respondents that the respondents are entitled to solatium on the additional amount of compensation at the rate of 30%, deserves to be accepted. The Supreme Court in Raghbir Singh (supra) has ruled that, "there can be no doubt that the benefit of the enhanced solatium is intended by S.30(2) of the Amendment

Act in respect of an award made by the Collector between 30th April 1982 and 24th September 1984, likewise, the benefit of the enhanced solatium is extended by S.30(2) to the case of an award made by the Court, between 30.4.1982 and 24.9.1984 even though it be upon reference from an award made before 30th April 1982." In the present case, the Land Acquisition Officer had made award on March 25, 1980, whereas the Reference passed award on July 31, 1982, i.e. after introduction of the Bill of the Amendment Act, 1984 in the Parliament, i.e. on April 30, 1982. By virtue of transitory provisions, the benefits of Amendment Act of 1984 were extended to the awards made by the Collector or the Court between 30.4.1982 and 29.4.1994. In view of the settled legal principle, the respondents are entitled to solatium at the rate of 30% under Section 23(2) of the Act. Therefore, the award of the Reference Court holding that the claimants would be entitled to solatium at the rate of 15% deserves to be set aside and it is held that the claimants are entitled to solatium at the rate of 30%. The submission of the learned counsel for the respondents that the Reference Court has erred in not awarding interest on the additional amount of compensation at the enhanced rate of 9% per annum for the first year and for the subsequent years thereafter at the rate of 15% per annum also deserves to be accepted in view of the settled legal principles as propounded by the Apex Court in the case of Municipal Committee, Bhatinda and others vs. Balwant Singh and others, reported in 1995 (5) SCC 433, wherein, the Apex Court has ruled that, if the award was made after 30th April 1982, the claimants were entitled to benefit of Section 28 as amended by the Act 68 of 1984, and the claimants are entitled to interest at the enhanced rate of 9% from the date of taking possession for one year and 15% thereafter till the date of payment or deposit in the Court, whichever is earlier.

15. For the foregoing reasons, all the appeals filed by the Special Land Acquisition Officer, Vatrak Project, Modasa, fail and are dismissed. Cross Objections filed by the respondents are partly allowed to the extent that the respondents shall be entitled to solatium at the rate of 30%, and interest at the rate of 9% per annum for the first year from the date of taking over possession, and, on expiry of the first year, at the rate of 15% per annum till realisation or till the amount is deposited in the Court whichever is earlier. The determination of market value of the acquired house-site lands at Rs.3.00 per sq.mtrs is hereby confirmed. Determination of market value by dividing acquired houses into four categories and awarding compensation at different rates for

different categories is also hereby confirmed. There shall no order as to costs. The office is directed to draw decree in terms of this judgment.

(swamy)